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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,657	01/22/2002	Sham-Yuen Chan	MSB-7257-DIV	8053
7590	09/23/2004		EXAMINER	
Bayer Corporation 800 Dwight Way P.O. Box 1986 Berkeley, CA 94701			MERTZ, PREMA MARIA	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/051,657

**Applicant(s)**

CHAN ET AL.

**Examiner**

Prema M Mertz

**Art Unit**

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1/22/02
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/02</u> | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1646

### **DETAILED ACTION**

1. Claims 1-14 have been canceled in the preliminary amendment filed 1/22/02.

New claims 15-21 (1/22/02) are pending and under consideration by the Examiner.

#### ***Specification***

2. In the first line of the instant specification, Applicants are requested to update the status of the prior applications to which the instant application is claiming benefit. The status of nonprovisional parent 09/310,026, should be updated and the expression, “now U.S. Patent No. 6,348,192” should follow the filing date of the parent application.

Furthermore, in the first line of the specification the incorrect Serial No. 09/08,080, filed May 15, 1998, is recited. In addition the specification fails to recite whether the cited application is a continuation, C-I-P or a divisional of the instant application. Appropriate recitation of the correct serial number and status of the prior applications to which the instant application is claiming benefit is required.

#### ***Claim rejections - 35 USC § 112, second paragraph***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is vague and indefinite because it recites “a mammalian cell line encoding an interleukin-2 mutein...”. However, this is incorrect because the “mammalian cell line comprises a DNA encoding an interleukin-2 mutein”.

Art Unit: 1646

Claim 20 is vague and indefinite because the Figure number has not been recited.

Claim 21, line 4 is vague and indefinite because it is unclear if the method comprises the steps. It is suggested that the claim be amended to recite "...said method comprising the steps....".

Claims 16-18 are rejected as vague and indefinite insofar as they depend on claim 15 for its limitations.

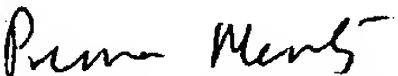
***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prema Mertz whose telephone number is (571) 272-0876. The examiner can normally be reached on Monday-Friday from 7:00AM to 3:30PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961.

Official papers filed by fax should be directed to (703) 872-9306. Faxed draft or informal communications with the examiner should be directed to (571) 273-0876.

Information regarding the status of an application may be obtained from the Patent application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Prema Mertz Ph.D.  
Primary Examiner  
Art Unit 1646  
July 8, 2004